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(1) (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

CIVIL REVISION NO. 75 OF 2006

APPLICANTS : 1. Shabbir Hussain, aged about 65 years, S/o late Shri Sajjad Hussain

(Since deceased through legal representatives)

1. (a) Amna Begam, Widow of Shabbir Hussain, aged about 63 years.

(b) Shahid Kasmi, S/o Shabbir Hussain, aged about 36 years.

(c) Naushad Kasmi, S/o Shabbir Hussain, aged about 34 years.

(d) Shoaib Kasmi, S/o Shabbir Hussain, aged about 30 years.

(e) Sohail Kasmi, S/o Shabbir Hussain, aged about 28 years.

(f) Zahid Kasmi, S/o Shabbir Hussain, aged about 26 years.

P.R. No. 149 dt 6
Presented by Shri Bhuneshwar Tamrakar
dated 29/3/06

Note:- Shabbir Hussain, Since deceased Separate application for permission to challenge the impugned order dated 06.03.2006 is filed by legal representatives of Shabbir Hussain.

2. Smt. Nasera Begam, aged about 65 years, Widow of Anwar Hussain, Daughter in-law of late Shri Sajjad Hussain

All residents of Near Nagorav Sheish School Mainroad Juna Bilaspur, Tahsil and District Bilaspur (M.P.) (Now C.G)

(2) (4)

VERSUS

NON-APPLICANTS :

1. Ahemad Hussain, aged about 58 years, S/o late Amjad Hussain

2. Israr Hussain, aged about 55 years, S/o late Amjad Hussain

3. Iftekhar Hussain, aged about 48 years, S/o late Amjad Hussain

All resident of Near Nagorav Shesh School Manroad Juna Bilaspur, Tahsil and District Bilaspur (M.P.) (Now C.G)

4. Mst. Hazara Begam, aged about 67 years, W/o Abdul Rajjak Daughter of late Amjad Hussain, R/o Village- Uslapur, Tahsil and District Bilaspur (M.P.) (Now C.G)

5. Mst. Sabra Begam, aged about 57 years, W/o Mobin Ahemad Quraishi daughter of late Amjad Hussain, R/o Bairan Bazar, Raipur (M.P.) (Now C.G)

6. Mst. Saira Begam, aged about 41 years, W/o Abdul Sattar Daughter of late Amjad Hussain, R/o Tikrapara, Behind Narmal School Bilaspur (M.P.) (Now C.G.)

7. Nadira Begam, aged about 38 years, W/o Rijwan Daughter of late Amjad Hussain, R/o Near Maszid Chantidih Bilaspur, Tahsil and District Bilaspur (M.P.) (Now C.G.)

(3)

CIVIL REVISION UNDER SECTION 115 OF THE CIVIL PROCEDURE CODE, 1908

HIGH COURT OF CHHATTISGARH, BILASPUR

CIVIL REVISION NO.75/2006

Shabbir Hussain and others

Vs.

Ahmed Hussain and others

Appearance :

Shri Manidra Shrivastava, Sr. Advocate with Shri Bhaskar Pyasi, counsel for the applicants.

Shri Saifuddin Rajas, counsel for the respondents.

ORAL ORDER

(5.7.2006)

SUNIL KUMAR SINHA, J.

Shri Manindra Shrivastava, Sr. Advocate with Shri Bhaskar Pyasi, counsel for the applicants.

Shri Saifuddin Rajas, counsel for the respondents.

Heard finally with the consent of the parties as the parties are duly represented by their counsel.

(2) This revision is directed against the order dated 6.3.2006 passed by the First Civil Judge, Class-I, Bilaspur in Execution case No.240-A/1996 pending in his Court. A perusal of the order would show that in a proceeding of execution of decree, filed by the respondents before the Executing Court, the applicants filed threefold objection as follows:-

(i) That the execution proceedings are barred by limitation as the decree had become final on 9.7.1981 and it was not put for execution within a period of 12 years from the said date.

(ii) That all the necessary parties have not been added as the parties in the execution proceedings.

(iii) The petition for execution does not contain particulars in accordance with law.

(3) These objections were dismissed by the Executing Court, by passing 2-3 lines order in following manner:

> "प्रकरण में जो आपत्ति प्रस्तुत की गई है उस सम्बन्ध में सम्पूर्ण प्रकरण का अवलोकन किया गया । प्रकरण के अवलोकन के पश्चात् आपत्ति बिना किसी आधार के होना प्रतीत हो रहा है इसलिए आपत्ति स्वीकार किए जाने का कोई औचित्य दिखाई नहीं दे रहा है इसलिए प्रकरण में प्रस्तुत आपत्ति निरस्त की जाती है ।"

(4) The submission of learned counsel for the applicants is that the amplitude of Section 47 of the Code of Civil Procedure is too wide to include such questions to be decided by the Executing Court while passing an order about execution of the decree. He further submits that in fact, the Executing Court has not entered into the controversy raised by the applicants and has passed a superficial order in a hasty manner, which cannot be said to be a judicial order in accordance with law. He prays for quashing of the said order and also for issuance of appropriate directions.

(5) On the other hand, learned counsel for the respondents supports the order and submits that though the order does not

contain reasons on which the Executing Court has overruled the objections, but, the Executing Court has taken a right view on the basis of material available on record. The objections raised by the applicants were liable to be dismissed, which have rightly been dismissed by the Executing Court.

(6) Section 47 relates to the questions to be determined by the Court, executing a decree. It has been provided that all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court, executing the decree and not by the separate suit. There are certain explanations under this Section. The overall effect of this Section is that as soon as a question relating to the execution discharge or satisfaction of the decree is raised by the parties concerned, the Executing Court shall have to determine those questions and no separate suit etc. is required to be filed in this regard.

(7) In view of the provisions contained in Section 47, it is apparent that when the objection like limitation, maintainability, non-joinder and want of appropriate particulars were raised by the applicants against the execution of the decree, it was incumbent upon the Court to decide those points by passing an appropriate order on them, which has not been done in this case.

(8) Another aspect of the matter would be that the decision reached by the Executing Court does not appear to be based on reasonings. A judicial order is always required to be passed on

reasonings and if the order is unreasoned, the same cannot be sustained in the eyes of law. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice (***please see Alexander Machinery Dudley Ltd. Vs. Crabtree (1974 LCR 120) reference available in AIR 2003 SC 1462 at page 1467.***

(9) In view of what has been stated above, I am of the opinion that this order passed by the Executing Court must be quashed. The same is accordingly quashed. The Executing Court is directed to take up the matter for hearing and to decide these points raised by the applicants before passing an order regarding execution of decree. If the warrant of possession have already been issued, they shall be kept in abeyance till decision of the points raised and the decision rendered by the executing court shall be followed in all respects.

(10) At this stage, Shri Saifuddin Rajas submits that the matter is an old matter and some time-limit be also fixed for the Executing Court. The prayer appears to be reasonable. It is observed that the Executing Court shall take necessary steps to dispose of the matter at an early date, provided the parties to the petition extend due cooperation.

(11) Parties are directed to appear before the Executing Court on 17th July 2006.

Sd/-
Sunil Kumar Sinha
Judge